

D R A F T

1 August 1985

*pay
overtime*

MEMORANDUM FOR: Director of Personnel

FROM: Clair E. George
Deputy Director for OperationsSUBJECT: Proposed Premium Pay Policy for the
Directorate of Operations

1. Action Requested: Approval is requested for the recommendation contained in paragraph 4 to institute Premium Pay for non-SIS/SNS officers performing administratively uncontrollable overtime (AUO) while assigned to DO positions in the [] field.

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2. Background: The question of overtime for DO officers has been raised periodically for several years. Up to now, we have resisted. We have never doubted that our officers worked long hours, but we somehow considered it a given that those extra hours would be worked without compensation, that for true professionals, it is just part of the job. Our position on Premium Pay has changed, in part spurred by the Director's Excellence Speech calling for the elimination of the eight-hours donated overtime rule. Here are some of the other reasons:

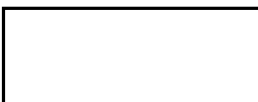
o The field officer is at the heart of our business and our commitment to operations regularly asks large numbers of our people to give significantly in excess of the conventional work week under circumstances that fit the definition of AUO. We need to recognize and reward the time we spend to get the job done. To do otherwise is unfair and increasingly unrealistic.

o Agency regulations call for employees to be compensated for overtime work and make specific provision for Premium Pay for AUO. In short, the authorization is there; we just haven't been using it.

o Right now the DO is out of step with both other agencies of the U.S. Government (FBI, DEA, Secret Service, and INS) and other elements of this Agency (OSO, OTS, OC, OS), all of which authorize Premium Pay for certain officers.

o Premium Pay will cost considerably less than payment for actual hours of overtime worked.

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*Dr Pers approval required*

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3. What We Have Done: To make certain that Premium Pay is indeed the way to go, I had the DO Career Management Staff run a test bed/ [REDACTED]

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[REDACTED] The CMS cable clearly spelled out what did and did not constitute AUO and called for scrupulous attention to reporting. The initial responses [REDACTED] has yet to (reply) covering the 9 to 22 June and 23 June to 6 July pay periods shows that our operations officers are averaging 20 to 24 hours of AUO per two week pay period, with some individual officers donating upwards of 50 hours. Other categories of officers serving in DO field installations [REDACTED] officers, reports officers, DO and DI analysts, and various DA support officers--also work AUO, in some cases rivaling or exceeding the hours put in by ops officers. Because the test period included rotations, R&R, and vacations, we have extended the tracking for three more months--through 28 September--to provide a wider, more accurate and defensible sample should the need arise. Meanwhile, however, it is clear to me that Premium Pay is justified, and that our approach as outlined below is responsible and, if anything, conservative. For that reason, I want to move ahead so Premium Pay can be implemented on a modest, experimental basis effective the beginning of FY 1986.

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4. Recommendation: It is recommended that:

- a. The DO be authorized to pay Premium Pay beginning FY 1986.
- b. Premium Pay be limited to a rate of 10 or 15 percent of the minimum rate of a GS-10/1, depending on the number of hours worked.
- c. Premium Pay be limited to those non-SIS/SNS officers serving in DO positions in the [REDACTED] field, excluding officers serving in Headquarters and in the Greater Washington, D.C. area.

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- d. Certifying authority be delegated to Chiefs of Station [redacted] with the understanding that supporting documentation on hours worked by each officer receiving Premium Pay be retained in the field and be subject to periodic audit.
- e. The Electronic Time and Attendance Reporting System (ETARS) be used to report Premium Pay. This would prevent automatic employee participation and the potential for overpayment. This would also provide "real-time" reporting and payment and enable us to drop employees who are on leave or otherwise not in the zone of eligibility during any given pay period.

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Clair E. George

Attachment:
Fact Sheet

APPROVED:

Director of Personnel

Date

FACT SHEET: Premium Pay for the Directorate of Operations

Authorization:

Annual Premium Pay is a form of overtime pay designed to compensate employees for duties requiring substantial amounts of irregular or occasional overtime work. It is granted for administratively uncontrollable work or regularly scheduled standby duty with the concurrence of the Deputy Director and approval of the Director of Personnel This pay does not require Congressional review.

Definition:

Under Title V, Premium pay is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent of the rate of basic pay that does not exceed the minimum for GS-10/1, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position.

"...an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay."

The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position. The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties and of such a nature that failure to carry on would constitute negligence.

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Eligibility:

Most Agency professional employees are eligible for Premium Pay. SIS and SNS employees are not. Also, since Premium Pay is subject to the pay cap, no other officer could exceed the maximum rate for a GS-15/10 for any single pay period. Clerical and Technical employees are not eligible for Premium Pay but are eligible for overtime which, in many cases, is more advantageous than premium pay.

STAT It is estimated that up to 1,500 employees serving in the DO [] could be eligible for Premium Pay at an estimated annual cost of \$4.5 million. Money is available in the FY 1986 DO budget.

Under the DO proposal:

o Not everyone will be eligible and not everyone eligible will qualify.

o Only directed overtime would be paid to officers serving at Headquarters.

o Clerical and Technical employees would continue to be eligible only for regular overtime.

STAT o Premium Pay would be authorized only for non-SIS/SNS officers occupying positions on the DO staffing complement in the [] field. This would include certain DDA and other non-DO careerists.

STAT o For purposes of Premium Pay, only those officers serving in [] in the Greater Washington, D.C. [] will be eligible.

STAT o Of those eligible, only those who were certified as meeting the minimum averages of over three hours AUO or ~~or~~ over five hours AUO per week would receive Premium Pay at the rate of 10 or 15 percent, respectively.

o Officers receiving Premium Pay would not receive overtime.

o Premium Pay would be subject to the pay cap.

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Percent of Pay:

- 10 percent: A position which requires an average of at least three but not more than five hours of irregular overtime per week.
(\$2,401)
- 15 percent: A position which requires an average of over five but not more than seven hours per week.
(\$3,602)
- 20 percent: A position which requires an average of over seven but not more than nine hours per week.
(\$4,802)
- 25 percent: A position which requires an average of over nine hours per week.
(\$6,003)

Under the DO proposal, we would use the 10 percent (\$2,401 per annum) and 15 percent (\$3,602 per annum) figures for FY 1986. Once we have a better picture of the costs and the administrative and payroll mechanisms involved, we may consider raising Premium Pay to 25 percent (\$6,003 per annum), the maximum allowable.

Administration:

To qualify for Premium Pay, all hours of overtime must be recorded each pay period.

Under the DO proposal:

- o The DO would be given blanket authority to institute Premium Pay.

- o Certifying authority would be delegated to Chiefs of Station [redacted] They will be responsible for maintaining field records on AUO for each officer certified and for determining a method to avoid dual payment for Clerical and Technical employees.

- o Field records documenting AUO for each officer receiving Premium Pay will be subject to periodic audit.

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Premium Pay in Effect in the Agency:

(Source: Memo for D/Pers fm C/PMCD, dtd 31 January 1985 Subj: Premium Pay in Lieu of Hourly Overtime Pay for Administratively Uncontrollable Overtime.)

STAT "...The Agency has adopted AUO provisions in its regulations [redacted] Currently, the Office of Sigint Operations (OSO) and the Office of Technical Service (OTS) in the Directorate of Science and Technology (DS&T); Latin America Division in the DO; and the Office of Communications (OC) and the Office of Security (OS) in the DA have personnel receiving AUO. OTS has authorization for Technical Operations Officers in all overseas stations, STAT [redacted] and Special Activities Division at Headquarters to receive AUO. At overseas stations, AUO is certified and paid quarterly to those ((OTS)) officers who have spent more than 33 percent of their time TDY in a reporting period and who have met the required average overtime hours. Officers STAT at Headquarters [redacted] receive AUO only when on temporary duty (TDY) and working the required overtime hours. During the last quarter, only 21 officers qualified for AUO, and all were stationed overseas."

Other USG Agency Premium/Overtime Pay Practices:

See below.

(Source: Unclassified attachment to Memo for D/OP fm C/PMCD, dtd 2 October 1984 Subj: Overtime Policy)

SUBJECT: Overtime Practices Within the Intelligence Community

(1) Department of State (DOS) operates its personnel program under three separate laws: Title V, the Fair Labor Standards Act (FLSA) and the Foreign Service Act of 1980. For all employees not covered by the Foreign Service Act, the DOS administers its personnel program as any other civilian agency. Overtime or compensatory time are accrued and paid under Title V or FLSA, based on whether or not the employee is covered by FLSA. (U)

Foreign Service Officers (FSOs) are prohibited by the Foreign Service Act from receiving overtime compensation. However, they do have as compensation for their legislated dedication the more lucrative Foreign Service Pay Schedule with its 47 percent pay range and annual step increases through most of the ranges. The Foreign Service Act also provides for compensatory time off for overtime in certain situations. Currently there is wide spread but inconsistent use of compensatory time at the discretion of post management. The Foreign Service Officers Association is currently bargaining for greater use of compensatory time off. (U)

We were also advised in our discussion with the DOS that overtime is becoming a very sensitive issue with younger FSOs, who expect to be paid for time they put in whether in the office or at after-hours official functions. In their current negotiations, the FSOs are asking not only for compensatory time off, but also a structured 8:00-5:00 workday. (U)

(2) National Security Agency (NSA) is, like the Agency, exempt from the pay provisions of Title V. However, for overtime administration the NSA has adopted internal regulations which closely follow Title V. They have, as a matter of policy, paid directed overtime to all non-Senior Cryptologic Executive Service (SCES) personnel. Personnel who are TDY from Headquarters are expected to maintain a record of overtime hours worked while on TDY to be submitted on their return. Others submit their hours as part of the regular time and attendance process, subject to the total compensation limit of GS-15/10. For employees earning more than the maximum rate for GS-10, the NSA requires that they take compensatory time off, if possible. If after 13 weeks, the employee is unable to use his/her compensatory time, payment is made at the overtime rate of one and a half times the GS-10/1 rate. (U)

In general, employees who have reached the maximum levels for overtime compensation (GS-15/10) continue to work overtime if required. However, there seems to be an informal policy within the NSA that limits the use of such personnel to voluntary overtime. (U)

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SUBJECT: Overtime Practices Within the Intelligence Community

(3) Federal Bureau of Investigation (FBI) operates within both Title V and FLSA for overtime administration. For administrative, technical, and clerical personnel, overtime is paid on an hourly basis for all hours of directed overtime (or suffered and permitted overtime for FLSA non-exempt employees). Agents are paid annual premium pay for administratively uncontrollable overtime (AUO). This premium pay is up to 25 percent of the rate for a GS-10/1, and is paid in lieu of overtime pay. The amount of premium is based on an average of the number of hours of overtime worked over twelve pay periods. The percentage is adjusted automatically every four pay periods based on documented hours worked during the reporting period. (U)

The FBI has found the AUO premium pay to be a very cost effective means of overtime compensation for its agents. The maximum amount of premium pay equates to an average of only 10 hours of overtime per week, while most agents are working far more than this. Furthermore, AUO is easy to budget for based on known numbers of agents who will be drawing the premium pay. Periodically, the use of AUO by the FBI has been questioned by Justice, the Office of Management and Budget (OMB) and Congress; however, the detailed records they have maintained have provided ample evidence of its cost effectiveness. (U)

There have been occasional complaints from agents on AUO working with technical employees whose hourly overtime amounts to significantly more than AUO for less hazardous and demanding work. These complaints are accepted as quirks of the system, and have not led to any recommendations for change. (U)

(4) Secret Service follows much the same policy as the FBI in its overtime administration. As the FBI, the Secret Service pays all its agents annual premium pay for AUO. Percentages of premium are compensated quarterly based on hours worked over approximately a six month period. Agents are responsible for reporting actual hours of overtime worked and the case number to which the work was charged. They consider the AUO program to be highly cost effective because it helps to maintain the morale of their workforce, and keeps costs low compared to overtime which would have to be paid on an hourly basis. (U)

(5) Drug Enforcement Agency (DEA) follows the overtime procedures used by the FBI and the Secret Service, with its agents on AUO. As with the other agencies, the DEA finds AUO to be extremely cost effective. For some reason, however, the DEA program seems to be challenged by Justice and OMB somewhat more than the other agencies using premium pay. It appears this is because the DEA record keeping procedures are somewhat more lax, and there are instances where agents have worked both AUO and

regularly scheduled overtime in the same pay period, drawing both types of pay. AJO was not intended to supplement other types of overtime, although the situations described by the DEA probably do meet the letter if not the spirit of Title V overtime provisions. (U)

(6) Defense Intelligence Agency (DIA) is covered by the pay provisions of Title V and pays overtime in accordance with the provisions of that law. As with the NSA, the DIA tends not to direct overtime from employees who have reached the maximum compensable level of GS-15/10. However, most employees in this situation continue to willingly donate time necessary to complete their work. (U)

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Reasons for Premium Pay in the Directorate of Operations:

o Officers serving in DO positions in the [redacted] field are putting in a significant amount of uncompensated overtime and fit the definition of employees who must, by the very nature of their jobs and responsibilities, set their own overtime requirements. This is true not only of DO operations officers [redacted] but also of other categories of personnel serving in DO [redacted] field positions: reports officers; DI and DO analysts; paramilitary and other specialists; DA support, personnel, logistics, and finance officers; and translators/transcribers to name but a few. It is time we recognize and reward the time we spend to get the job done.

o Inter-agency and intra-Agency equity.

o The DCI in his 1984 speech on Excellence said the Agency would "eliminate the 8-hour donation rule for overtime."

o Potential for legal challenge on grounds that the DO is in violation of Agency regulations.

o Premium Pay is less costly than payment for actual hours of overtime worked.

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